IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14276 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI NAGARJI NAYAK

Versus

COMMISSIONER

Appearance:

MR SV PARMAR for Petitioner No. 1 with
MS PREETI S PARMAR for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1
MR KM PARIKH, AGP for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/07/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent no. 1 - Commissioner, Gujarat Housing Board to obtain from the petitioner an option in the prescribed form and to apply Regulation Annexure - "A" and immediately confer on the petitioner the retirement benefits which he is entitled as per Resolution Annexure - "A".

2. The petitioner joined his service with the respondent no. 1 as workcharge "Mistry" on 1-7-1964 and was promoted to the post of Workcharge Assistant from 20-7-1990. Thereafter the petitioner retired on 1-6-1991. Thus, the petitioner has put in service for about 27 years. The pension scheme has been introduced for the employees of the Gujarat Housing Board (hereinafter referred to as the "respondent Board" for brevity) on 13-7-1992 with effect from 1-4-1990. Prior to this scheme, the employees of the respondent Board were eligible for retirement benefits as per Contributory Provident Fund/Employees Provident Fund Scheme. After retirement, the petitioner was paid pensionary benefits 52,248/- towards Provident Fund, Rs.10,872/- towards gratuity and Rs.4026/- as family pension. The provident fund amount includes the contribution of the respondent Board and contribution made by the employee - petitioner. The pension scheme has been introduced in exercise of power u/s 74 of the Gujarat Housing Board Act, 1961 with previous sanction of the State Government. The respondent Board made a regulation with a view to regulate to grant of pension and other retirement benefits to its employees and that scheme has been made applicable with effect from 1-4-1990. The employees who were in existence on 1-4-1990 or retired thereafter, they were made eligible for pension scheme. As per the Revised Pension Rules, the employees of the respondent Board including the petitioner filed their option to that effect and gave undertaking to return the entire benefits they have taken from the respondent Board.

3. The respondent Board is required to inform the employees to tender the option on or before 30-8-1992. The employees who performed their service as workcharge establishment were not informed about the Regulation and Government Resolution Annexure-B and those employees were not asked by the respondent Board or any head of the office of the respondent Board to obtain option from such workcharge employees. The petitioner sent a letter to the Commissioner of the respondent Board on 13-9-1993 stating therein that though he is entitled to the retirement benefits as per Regulation Annexure-A, no option has been taken from him by any officer of the

respondent Board. The respondent Board informed the petitioner that the matter is under active consideration before the Government and till the date no final decision is taken and nothing can be done as requested by the petitioner. The petitioner was granted retirement benefits as per the scheme prevalent at the relevant time. The the respondent Board in exercise of powers u/s 74 (C) of the Gujarat Housing Board framed Regulation which covers the case of the petitioner. An inaction on the part of the respondent Board, to confer the retirement benefits after obtaining option from the petitioner is illegal, arbitrary and violative of the fundamental rights guaranteed under Article 14 of the Constitution of India. The pension scheme has not made any distinction between the administrative employees and workcharge employees. Even there is no distinction between the permanent and temporary employees of the respondent Board and the pensionary benefits have been granted as a matter of right to each and every employee of the the respondent Board.

4. An affidavit-in-reply has been filed by the respondent Board stating therein that the petitioner joined his service as workcharge "Mistry" on 1-4-1964 and he was promoted as Work Assistant with effect from 21-7-1990 and he was retired on 31-5-1991. On attaining the age of superannuation, the petitioner had in all worked for 26 years and 11 months and at the time of retirement his basic pay was Rs.1600/- p.m. The petitioner was paid Rs.52,248/- towards C.P.F. and the petitioner was entitled to C.P.F. as per the scheme of Contributory Provident Fund. The petitioner was also paid Rs.30,577.50 ps. towards gratuity and other benefits applicable to the petitioner. It is also mentioned that the employees of the respondent Board were not eligible for the Pension Scheme and that was accepted in principle to be enforced with effect from 1-4-1990. The respondent Board addressed a letter on 16-1-1991 and imposed certain conditions for implementation of the pension scheme so far as the employees of the respondent Board are concerned and it was also directed that the said pension scheme should be implemented with effect from 1-10-1991 instead of 4-4-1990. The respondent Board requested the State Government to permit the respondent Board to implement the pension scheme from 1-10-1991 instead of 4-4-1990 and the State Government granted permission with effect from 1-4-1990 vide letter dated 13-7-1992. However, there was no provision for pension scheme for the workcharge employees. The Superintending Engineer, R & B Cirlce-I, Ahmedabad wrote a letter to the respondent Board on 28-8-1992 to the effect that the

pension was applicable to the workcharge employees with effect from 8-1-1976. Considering the facts, the respondent Board made a proposal in the meeting held on 17-10-1982 for consideration. So far as the workcharge employees of the respondent Board are concerned, it was resolved to approach the State Government for necessary approval. The petitioner was a workcharge employee and was promoted as Work Assistant prior to his retirement on 31-5-1991 and hence he was not entitled to and eligible for the pension scheme till the State Government takes decision. Appropriate decision on the resolution of the respondent Board passed on 17-10-1992. The respondent Board also informed the petitioner that the matter is under active consideration of the Government and till the decision is taken nothing can be done for pensionary benefits to be given to the petitioner. The petitioner cannot be given double benefits i.e. Contributory Provident Fund as well as Pension Scheme. The petitioner was entitled to the benefits under the Contributory Provident Fund Scheme and the Pension Scheme is still not available to the petitioner. The petitioner has already been paid all the benefits under the scheme of C.P.F. and the petitioner cannot be given any benefit of the Pension Scheme unless the decision for implementation of the Pension Scheme is taken by the State Government. The respondent Board has requested the State Government for taking appropriate decision. The State Government has not taken any decision on the respondent no.1's aforesaid resolution dated 17-10-1992.

5. The contention of the learned counsel for the petitioner is that the pensionary benefits have been extended to the employees of the respondent Board with effect from 1-4-1990. The petitioner retired on 1-6-1991. As such, the petitioner was in service on the date of implementation of the pension scheme. No distinction has been made by the Regulation to exclude the workcharge employees. Hence, the petitioner being workcharge employee is entitled to the pensionary benefits under Regulation. The respondent Board is not a competent authority to resolve for implementation of regulation. The petitioner also applied for extension of pensionary benefits available under the aforesaid Regulation. But it appears that on wrong presumption the respondent Board considered that the workcharge employees are not the employees of the respondent Board. Hence, he replied that the proposal has been made to the State Government for extension of pensionary benefits to the workcharge employees till the decision is taken by the State Government, nothing is done for extension of the pensionary benefits to the petitioner. The decision of

the respondent Board is illegal, arbitrary and is not sustainable in the eye of law. Hence, this petition.

6. Learned counsel for the petitioner submitted that the respondent Board has already taken decision on the ground of the proposal made to the State Government, that the pensionary benefits should be extended to the workcharge employees of the respondent Board in view of the fact that the workcharge employees of the Road and Building Department and Urban Development and Urban Housing Department are getting benefits of pensionary benefits. The respondent Board is unable to extend those benefits to the petitioner unless the State Government gives its approval.

7. I have carefully considered the contentions of the learned counsel for the parties and perused the relevant material on record as well as Regulation of 1992 of the respondent giving pensionary benefits. It also appears that the employees who were in service on 1-4-1990 and those who retired thereafter, they are eligible for pensionary benefits under the aforesaid Regulation of the respondent Board. The workcharge employees of the respondent Board have not been excluded meaning thereby is that the workcharge employees are also entitled as they are getting monthly salary from the respondent Board as other employees are getting the same.

8. Learned counsel for the respondent could not show or produce any Regulation or Government or Resolution or Circular of the Government to show distinction between the permanent employees and temporary employees of the respondent Board workcharge employees and administrative employees. It is not contended by the leaned counsel for the respondent that the workcharge employees are not the servant or employees of the respondent Board and they do not fall within the definition of the employees of the respondent Board under the Gujarat Housing Board (Pension and Other Retirement Benefits) Regulation, 1992. The workcharge employees are not excluded as no exception has been made or provided under the aforesaid Regulation for the workcharge employees. As such, the workcharge employees are also entitled for the retirement benefits and other retirement benefits even the petitioner has taken benefit of C.P.F. Scheme. The petitioner cannot be said that the he is not entitled to the pensionary benefits.

9. In the facts and circumstances of this case, the workcharge employees of the respondent Board are entitled to the pensionary benefits and other retirement benefits

under Regulation of 1992 of the respondent Board. As such, the petitioner is entitled to the pensionary and retirement benefits. Therefore, the petition deserves to be allowed.

10. Accordingly, this petition is allowed and the petitioner is entitled to the pensionary and retirement benefits. The respondent No. 1 - Commissioner, Gujarat Housing Board, is directed to obtain option from the petitioner in the prescribed form in order to apply Regulation 1992 and to fix and settle the pensionary benefits to be given to the petitioner in accordance with law as expeditiously as possible preferably within three months from the date of presentation of a certified copy of this order. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/